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Second Session—Twenty-sixth Parliament

1964

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON **EXTERNAL RELATIONS**

To whom was referred the

Bill S-26, An Act respecting the Commission established
to administer the Roosevelt Campobello
International Park.

The Honourable G. S. THORVALDSON, *Chairman*

THURSDAY, MAY 28, 1964

WITNESSES:

Mr. H. H. Carter, Head of U.S.A. Division, External Affairs; Mr. J. D. Herbert, Chief, National Historic Sites Division, Northern Affairs and National Resources; Mr. D. W. Bartlett, Executive Assistant to the Deputy Minister, Northern Affairs and National Resources.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

THE STANDING COMMITTEE ON EXTERNAL RELATIONS

The Honourable GUNNAR S. THORVALDSON, *Chairman*

The Honourable Senators

Aseltine,
Beaubien (*Provencher*)
Blois,
Boucher,
Bradley,
Crerar,
Croll,
Farris,
Fergusson,
Flynn,
Fournier (*De Lanaudière*),
Gouin,
Haig,
Hayden,
Hnatyshyn,
Howard,
Hugessen,
Inman,

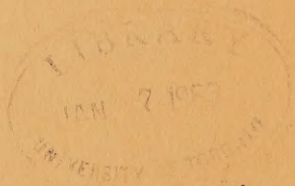
Jodoin,
Lambert,
MacDonald (*Queens*)
Macdonald (*Brantford*),
McLean,
Monette,
O'Leary (*Carleton*),
Pouliot,
Rattenbury,
Robertson (*Shelburne*),
Savoie,
Taylor (*Norfolk*),
Thorvaldson,
Vaillancourt,
Venoit,
Vien,
Yuzyk (35).

Ex officio members

Brooks,

Connolly (*Ottawa West*).

(Quorum 7)



1037851

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, May 27th, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Burchill, seconded by the Honourable Senator Kinley, for second reading of the Bill S-26, intituled: "An Act respecting the Commission established to administer the Roosevelt Campobello International Park".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Burchill moved, seconded by the Honourable Senator Kinley, that the Bill be referred to the Standing Committee on External Relations.

The question being put on the motion, it was—

Resolved in the affirmative."

JOHN F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, May 28, 1964.

Pursuant to adjournment and notice the Standing Committee on External Relations met this day at 2.00 p.m.

Present: The Honourable Senators Thorvaldson (*Chairman*), Aseltine, Blois, Bradley, Fergusson, Flynn, Haig, Lambert, MacDonald (*Queens*), Pouliot, Savoie, Taylor (*Norfolk*), Veniot and Yuzyk—14.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Blois, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the Committee's proceedings on Bill S-26.

Bill S-26, intituled: "An Act respecting the Commission established to administer the Roosevelt Campobello International Park", was read and considered.

The following witnesses were heard:

Mr. H. H. Carter, Head of U.S.A. Division, External Affairs.

Mr. J. D. Herbert, Chief, National Historic Sites Division, Northern Affairs and National Resources.

Mr. D. W. Bartlett, Executive Assistant to the Deputy Minister, Northern Affairs and National Resources.

In attendance but not heard were:

Mr. H. C. Kingstone, Deputy Head of Legal Division, External Affairs.

Mr. R. W. Nadeau, U.S.A. Division, External Affairs.

On Motion of the Honourable Senator Blois, it was Resolved to report the Bill without any amendment.

At 2.35 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Dale M. Jarvis,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, May 28, 1964.

The Standing Committee on External Relations to whom was referred the Bill S-26, intituled: "An Act respecting the Commission established to administer the Roosevelt Campobello International Park", have in obedience to the order of reference of May 27, 1964, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

G. S. THORVALDSON,
Chairman.

THE SENATE

STANDING COMMITTEE ON EXTERNAL RELATIONS

EVIDENCE

OTTAWA, Thursday, May 28, 1964.

The Standing Committee on External Relations, to which was referred Bill S-26, respecting the commission established to administer the Roosevelt Campobello International Park, met this day at 2 p.m.

Senator Gunnar S. Thorvaldson (*Chairman*) in the Chair.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report, recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: Honourable senators, I will call the meeting to order. We are here to deal with Bill S-26, an act respecting the commission established to administer the Roosevelt Campobello International Park. We have with us from the Department of External Affairs the following gentlemen: Mr. H. H. Carter, head of the U.S.A. Division of the department, Mr. H. C. Kingstone, deputy head of the Legal Division, and Mr. R. W. Nadeau of the U.S.A. Division. We also have Mr. D. W. Bartlett, Executive Assistant, from the Department of Northern Affairs and National Resources, and Mr. J. D. Herbert, Chief, National Historic Sites Division.

Is it agreeable if I ask Mr. Carter to proceed and speak to us on this bill. As I have told you he is from the U.S.A. Division.

Senator POULIOT: Does any one of the witnesses have a plan to show us the location? If so, if it could be passed around it would be helpful.

The CHAIRMAN: I will ask Mr. Carter to answer that.

Mr. H. H. Carter, Head of U.S.A. Division, Department of External Affairs: I think there is a booklet here. I would ask Mr. Herbert to pass around the plan. He was chairman of the group of Canadian officials who went down to the park and brought back a report.

The CHAIRMAN: Mr. Herbert, have you a plan to pass around?

Mr. J. D. Herbert, Chief, National Historic Sites Division, Department of Northern Affairs and National Resources: It is just a plan in the file. Here are some more things that may assist you.

The CHAIRMAN: Honourable senators, before we proceed I will put on the record that Mr. Nadeau has distributed certain maps and plans, photographs, etc., so that the committee can have a look at the site, and also some views of the location. I will ask Mr. Carter to speak to us. May we have order, please.

Mr. CARTER: Mr. Chairman, and honourable senators, my name is Harry Carter. As the chairman said, I am the head of the U.S.A. Division of the Department of External Affairs. In that capacity I acted as chairman of the negotiating group of Canadian officials who, with our United States opposite

numbers, and in consultation with the New Brunswick authorities, evolved this plan, which was eventually given governmental approval, and signed by the President of the United States and the Prime Minister of Canada on January 22 in Washington.

As you realize, of course, the legislation before you is designed to implement that international agreement, which was signed by the two heads of government on January 22, and similar legislation has been presented to both houses of the Congress, and its passage has advanced fairly rapidly. There is a general hope that the par will be open at the beginning of the tourist season in early July. That is the general objective of the people who have been working on it.

With me today is Mr. J. D. Herbert, who is the head of the Historic Sites Division of the National Parks Branch; Mr. D. W. Bartlett, who is an executive officer in the same department; and Mr. H. C. Kingstone, from my department, who is familiar with the legal angles.

Between us we hope to be able to answer your questions, but before you ask them I would like to make three points which might anticipate them.

In the first place, I would like to stress, that although the international agreement which is annexed to this bill, has been signed by the heads of the two federal governments, it was negotiated from the Canadian side in very close consultation with the Government of New Brunswick. The premier and his officials were in touch with their counterparts in Ottawa, and they expressed their approval of this agreement before it was signed. From their standpoint, they have now acted in causing provincial legislation to be passed covering the comparatively few matters in the agreement that have a bearing on provincial jurisdiction. I am referring specifically to some of the tax exemptions granted the commission under Article 8 of the agreement.

My only point is that these discussions have been happy and cordial, and there is complete agreement between the federal and New Brunswick Governments.

Secondly, I would like to emphasize what has been mentioned very often, that this is a unique arrangement. None of us know of any other situation in which there is an international park situated wholly in one country—

Senator ASELTINE: What about the Peace Gardens at Brandon, Manitoba?

Mr. CARTER: May I complete my sentence?

—wholly in one country, honouring the memory of a citizen of another country.

Senator POULIOT: Vimy Ridge in France has been given to Canada. It is Canadian soil in France.

Mr. CARTER: There might be an analogy there, but this is jointly owned and operated by two governments, although situated on Canadian soil, and it honours the memory of a great American.

To meet this unique situation a rather unusual formula was developed, namely, the idea of the park being administered by an international commission.

Three members of the commission are to be appointed by each of the federal governments. It was recognized that the interests of the Government of New Brunswick should be maintained, and the agreement specifically states that one of the Canadian commissioners shall be nominated by the Government of New Brunswick. The same applies to the State of Maine, and one of the United States commissioners is to be nominated by that state. Of course, to drive to Campobello Island one must go through the State of Maine, and take the bridge across at Lubec.

My third and final point is simply this, that in attempting to meet the unique international aspects of this situation we did not want to act in an impractical manner, so at every stage the officials concerned with the negotiations drew on the experience of the National Parks services of the two countries. Teams of park officials from Canada and the United States went down to the site last December. Mr. Herbert, in fact, was the chairman of the Canadian group, and he can speak to you about this in much more detail than I can. I think it is fair to say that there was a strong meeting of minds between the two groups of officials. I think it is clear that there was a strong meeting of minds between the two groups of officials.

For the future, once the commission is established, the agreement makes it clear that the commissioners would have to call on the resources of experts in the agencies of the two governments.

If you turn to Article 9 you will see that that is specifically provided.

What we have attempted to do, in short, is this. When I say "we" I mean the officials, eventually approved by our political leaders. We have attempted to meet both the unique international problems posed by the fact that Campobello was and is now owned by American citizens on Canadian soil but that it is associated with the great American and that we want to form a park which will be truly international in every sense.

Mr. HERBERT: This will be up to the commission, I would imagine, Mr. Chairman. Fifty per cent of the total cost, presumably.

The CHAIRMAN: Would you complete that sentence? That is, 50 per cent is to be assumed by each country, Canada and the United States? Is that correct?

Mr. HERBERT: That is correct, Mr. Chairman.

Senator POULIOT: What will be the share of Canada?

Mr. HERBERT: This will depend very largely on how the commission sees the scale of administration and maintenance that should be set up.

Senator POULIOT: Is there a caretaker?

Mr. HERBERT: There is a caretaker at the moment being employed by the Hammer family and presumably it would have to be maintained as soon as the commission took over. In addition to that, more detailed maintenance staff and also an operational staff will be necessary. Once the public becomes admitted they will have to be looked after and the security of the establishment has to be taken care of.

Senator POULIOT: Is there a representative of the commission on the committee?

Mr. HERBERT: The commission is not established, and will not be established until this act is passed both by this Parliament and the Congress of the United States.

Senator POULIOT: But the commission must have a survey.

Mr. HERBERT: The survey, Mr. Chairman, was made on behalf of the two governments by official agencies of the United States national parks and Canadian national parks.

Senator POULIOT: What about the commission with regard to the United States?

Mr. CARTER: There is no commission as yet, sir. The idea is to establish one. That is the purpose of the legislation. This is a private home at the present time owned by the Hammer family, and the idea is that it be donated by the two governments. They have agreed to establish a commission, but the title has not been transferred.

Senator POULIOT: And you do not know how many members of the commission there will be?

Mr. CARTER: Yes; according to the agreement the idea is that there will be three members from Canada and three from the United States.

Senator POULIOT: Who will be the chairman?

Mr. CARTER: Well, the chairmanship will be rotated between the Canadian and American members. The idea is to keep this as truly national as possible. Who the commissioners will be, of course, will be up to the governments.

Senator POULIOT: Each member will hold office in turn?

Mr. CARTER: It is a matter of presiding over the commission.

The CHAIRMAN: Senator Fergusson?

Senator FERGUSSON: Some members of the committee have said that they would like to see a map, to find where the place is.

(A map was produced.)

Senator ASELTINE: I think we all know now where the island is.

The CHAIRMAN: Have you seen the location on the map, Senator Fergusson?

Senator FERGUSSON: Yes, thank you.

The CHAIRMAN: Any further questions?

Senator BURCHILL: Senator Pouliot asked the extent of the gift, and you said, 10.2 acres. According to the papers you have on that file, 10.2 acres is right in the property, and there is an additional 11 acres or so on the island that was also included in the gift; that is 21 acres in all, is that right?

Mr. CARTER: I believe there are parcels on non-adjacent land, but I do not know just the extent of the actual acreage in those non-adjacent parcels. I have been told there are four or five acres but until we actually get the title it is rather difficult to tell.

Mr. HERBERT: As I understand it, there are three lots on the island involved in the gift. The Hammer family in fact hold four. One is on the opposite side of the island, and I believe also given by the Hammer family either to the Province of New Brunswick or to the county for a recreational area; but of the three parcels, two are contiguous, one being immediately across the road and between the two of them; they constitute 10.2 acres.

Senator BURCHILL: That is all that is included in the gift to this commission which is to be appointed?

Mr. HERBERT: Yes, as I understand it.

Senator ASELTINE: Would the park be any larger than that?

Mr. HERBERT: Yes, we envisage the park may eventually be almost twice that size. There are three factors which influence this. In the first place, it is surrounded by private property, and in order to give protection to a park of this kind we feel it is necessary to acquire buffer zones around it. Secondly, we need to provide an adequate parking area for, perhaps, 200 cars. Thirdly, eventually both the American and Canadian parks delegations felt the main road passing immediately in front of the house should be re-located later, and this will involve the acquisition of additional acreage.

Senator BLOIS: To be paid for jointly by the two governments?

Mr. HERBERT: Yes.

Mr. CARTER: All these costs will be split down the middle.

The CHAIRMAN: They require power under this act for the acquisition of property?

Mr. CARTER: Yes, Article 2 (a) of the agreement.

The CHAIRMAN: I think the answer is given by Mr. Kingstone who says the power to acquire property is sufficiently given by section 3 of the act. Are there some further questions, honourable senators?

Senator Brooks, in speaking in the Senate on this matter yesterday, made reference to the fact that there would be an executive secretary of this commission. He asked whether or not that office would be held by a Canadian. Can you answer that, Mr. Carter?

Mr. CARTER: This is an international agreement, and it was hoped by both sides to make it as truly international in every sense as possible. There are some pretty strong sensitivities on the other side. The sponsor in the U.S. House of Representatives was Congressman Roosevelt. We tried to avoid, in drafting this agreement, any suggestion that the set-up would not be entirely international, so it does not specify whether the executive secretary shall be a Canadian or an American. But I do think the position is very adequately safeguarded from the Canadian standpoint by the composition of the commission. Nobody is going to be appointed executive secretary without the agreement of the three Canadian commissioners, including the one nominated by the government of New Brunswick. Very probably the commissioners would decide to appoint a Canadian; but it might be there would be an American who has been a long-time resident of this country who would be considered to be the ideal choice. However, it is up to the commissioners.

Senator BLOIS: Do the commissioners themselves elect their own chairman from among themselves?

Mr. CARTER: Yes, but the chairmanship is to rotate.

Senator BLOIS: Yes, but they have that power to select and appoint the chairman of the commission themselves?

Mr. CARTER: Yes.

Senator BURCHILL: There is no length of term of office for the commissioners in our act?

Mr. CARTER: That is correct.

Senator BURCHILL: In the American act it says, "shall act during the pleasure of the President"?

Mr. CARTER: Yes.

Senator BURCHILL: I take it that is inferred in our Canadian act, is it not?

Mr. CARTER: I think that is probably a fair statement. I am not a lawyer myself, but I think the inference would be, if there is no specific figure set, it would be at pleasure. I have no instructions to insert anything on that. It says:

The Commission shall elect a chairman and a vice-chairman from among its members, each of whom shall hold office for a term of two years,—

Does that mean that the members who have served one term of two years would not be entitled to serve another term, that they would in fact be limited to just one term?

Mr. CARTER: I think, for example, if Mr. X were the Canadian chairman for two years and Mr. Y took over, at the end of his two years Mr. X could again be elected chairman.

Senator FERGUSON: Indefinitely, I suppose.

Mr. CARTER: Yes, it might be that way. For example, let us assume the situation is that only one member of the Canadian commissioners is located in Ottawa, and only one member of the United States commissioners is located in Washington. It would seem that they would be the logical people to be chairmen because they would be in touch with the agencies.

The CHAIRMAN: I would draw the attention of the committee to the fact that only two of these members may be appointed by the Canadian Government, and one by the Government of New Brunswick, is that right?

Mr. CARTER: I think they are all to be appointed by the federal governments. The three Canadians will be appointed by our Government, but one of those three will be nominated by the Government of New Brunswick. One of the United States' members will be nominated by the Government of Maine, and there are, of course, provisions for alternates. The total complement would be 12 people.

Senator BLOIS: I gather from Article 2 on page 4 they are going to charge admission. Is that not rather unusual in an international park of this kind?

Mr. CARTER: This point was gone into in some considerable detail and you will notice that the language in the section is permissive—the commission may charge. It goes on to say that the amount charged “shall be set at a level which will make the facilities readily available to visitors.” This, of course, is to discourage high fees. There seems to be a feeling that this should be left to the commission's discretion in the light of experience as to the degree to which the site was developing. They would probably decide if certain admission fees should be charged.

I would like Mr. Herbert to add something on that, having regard to the practice in the two countries.

Mr. HERBERT: The practice in the United States' national parks is to have an admission fee, and in all of the national parks and all historic sites this is the situation. In Canada the practice is somewhat different. In some national parks we have admission charges, and in some there is no charge, and there is no charge for any historic sites in Canada.

Senator ASELTINE: It would be self-sustaining otherwise. Is it intended to be?

Mr. HERBERT: The experience of both countries is that no historic site is self-sustaining even if an admission fee is charged.

Senator BLOIS: In many places in the United States where I have been there is no charge for admission to grounds, but if you want to go into a house and examine furnishings and things of that nature there is a charge for that. I think I may be wrong but it is unusual to have admission charges to grounds.

Mr. CARTER: It is my impression, which Mr. Herbert has confirmed, that it was the thinking of experts at the official level that they would not impose admission fees to begin with anyway, and they considered this very carefully and in the light of the rather delicate nature of public reaction, the possibility of adverse reaction.

Senator BLOIS: I presume they would have to have custodians or guards there all the time because I think we all know from experience that people have a great habit of handling things, and they want to make sure that furniture, etc., is not handled.

Senator FERGUSON: May I ask if the commissioners are to get any recompense other than the honour of being named, for the work they do?

Mr. CARTER: This is covered by Article 11, 4 of the agreement:

The Commissioners shall receive no remuneration from the Commission; however, they may be paid reasonable per diem and travel expenses by the Commission.

Senator FERGUSON: I did not know that.

Mr. CARTER: The answer is really: No.

The CHAIRMAN: That is contained in the schedule, which is the agreement between the Government of Canada and the Government of the United States.

Mr. CARTER: I think Mr. Herbert might mention something with respect to this question of the security of the property.

The CHAIRMAN: Would you like to say something on that, Mr. Herbert?

Mr. HERBERT: I would merely confirm, sir, that a substantial maintenance and security staff is necessary. This is a three-storey building and it has 34 rooms, most of which are of interest to the public. The structure of the house is such that it is very difficult to police it, if you like, and we envisage a daytime staff of at least three, and a nighttime security staff—perhaps commissionaires—of two. In addition, there will be groundsmen needed, because there are over ten acres of land to maintain.

Senator BLOIS: Is there anything in the bill to provide how that money will be obtained if admission is not charged? Even if admission is charged you will still need to have extra income. Is there anything in the bill which says how that money will be provided?

Mr. D. W. Bartlett, Executive Assistant, Department of Northern Affairs and National Resources: The financial arrangements are set forth in Article 11 of the agreement. It is on page 6 of the schedule. It provides that all the expenses are to be divided equally between the two governments in accordance with the budgets approved in advance by the two governments. Even the revenues from admission fees and concessions, if any, are to be turned over by the commission to the two governments, in addition to the money given to it or willed to it.

Senator BURCHILL: To what minister or department will the Canadian part of the commission report? I presume that a report will have to be made.

Mr. CARTER: As it is an international commission the report will go to the Secretary of State for External Affairs, but I suppose during the conduct of the year's work there will be many occasions when there will be direct contact with officials of the National Parks Service in accordance with Article 9. The *pro forma* report will be through our minister, because of its international nature.

The CHAIRMAN: That is, the Minister of External Affairs?

Mr. CARTER: Yes, that is provided for in the covering legislation.

Senator BLOIS: Yes, it is Article 2 of the agreement, I think.

The CHAIRMAN: Are you ready to consider the bill?

Senator BLOIS: I move that the bill and the schedule be reported.

The CHAIRMAN: Are you ready for the question? All those in favour?

Hon. SENATORS: Carried.

The committee adjourned.



Second Session—Twenty-sixth Parliament

1964

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON **EXTERNAL RELATIONS**

To whom was referred the

Bill S-25, An Act respecting the Geneva Conventions, 1949.

The Honourable GUNNAR S. THORVALDSON, *Chairman*

~~1964~~ TUESDAY, JUNE 2, 1964

WITNESSES:

Mr. M. H. Wershof, Assistant Under-Secretary of State for External Affairs
Brigadier W. J. Lawson, Judge Advocate General

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

THE STANDING COMMITTEE ON EXTERNAL RELATIONS

The Honourable GUNNAR S. THORVALDSON, *Chairman*

The Honourable Senators

Aseltine,
Beaubien (*Provencher*),
Blois,
Boucher,
Bradley,
Crerar,
Croll,
Farris,
Fergusson,
Flynn,
Fournier (*De Lanaudière*),
Gouin,
Haig,
Hayden,
Hnatyshyn,
Howard,
Hugessen,
Inman,

Jodoin,
Lambert,
MacDonald (*Queens*),
Macdonald (*Brantford*),
McLean,
Monette,
O'Leary (*Carleton*),
Pouliot,
Rattenbury,
Robertson (*Shelburne*),
Savoie,
Taylor (*Norfolk*),
Thorvaldson,
Vaillancourt,
Venoit,
Vien,
Yuzyk (35).

Ex officio members

Brooks,

Connolly (*Ottawa West*).

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, May 26th, 1964.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Baird, seconded by the Honourable Senator Basha, for second reading of the Bill S-25, intituled: "An Act respecting the Geneva Conventions, 1949".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Baird moved, seconded by the Honourable Senator Basha, that the Bill be referred to the Standing Committee on External Relations.

The question being put on the motion, it was—
Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, June 2nd, 1964.

Pursuant to adjournment and notice the Standing Committee on External Relations met this day at 2 p.m.

Present: The Honourable Senators: Thorvaldson (*Chairman*), Aseltine, Bradley, Croll, Gouin, Lambert, MacDonald (*Queens*), Pouliot, Veniot and Yuzyk. (10)

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Croll it was RESOLVED to report recommending that authority be granted for the printing of 800 copies of the Committee on Bill S-25.

Bill S-25, intituled: "An Act respecting the Geneva Conventions, 1949", was read and considered.

On motion of the Honourable Senator Pouliot it was RESOLVED to print the list of "Parties to the Geneva Conventions, 1949" as an appendix to the proceedings of this day.

The following witnesses were heard:

Mr. M. H. Wershof, Assistant Under-Secretary of State for External Affairs.

Brigadier W. J. Lawson, Judge Advocate General.

On Motion of the Honourable Senator Croll it was RESOLVED to report the said Bill without amendment.

Attest:

F. A. Jackson,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, June 2nd, 1964.

The Standing Committee on External Relations to whom was referred the Bill S-25, intituled: "An Act respecting the Geneva Conventions, 1949", have in obedience to the order of reference of May 26, 1964, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

G. S. Thorvaldson,
Chairman.

THE SENATE

STANDING COMMITTEE ON EXTERNAL RELATIONS

EVIDENCE

OTTAWA, Tuesday, June 2, 1964.

The Standing Committee on External Relations, to which was referred Bill S-25, respecting the Geneva Conventions, 1949, met this day at 2 p.m.

Senator GUNNAR S. THORVALDSON (*Chairman*) in the Chair.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report, recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: Honourable senators, we have a quorum. We have before us Bill S-25, an act respecting the Geneva Conventions, 1949. The gentlemen appearing before us today are Mr. M. H. Wershof, Assistant Under-Secretary of State for External Affairs; Mr. Pierre Charpentier, Legal Division, Department of External Affairs; Brigadier W. J. Lawson, Judge Advocate General; Wing Commander A. E. Cobus, of the Judge Advocate General's Office; Major W. B. Armstrong, Directorate of Administration (Army), Department of National Defence. I suggest that we might hear first from Mr. Wershof.

Mr. M. H. Wershof, Assistant Under-Secretary for External Affairs: Mr. Chairman, if the senators would like me to make a very brief general statement about the conventions and the bill: A good deal of the history of the conventions and their contents were explained, of course, to the Senate in the speeches of Senator Baird and Senator Thorvaldson; therefore I will not repeat what they have already said.

Of these four conventions which were signed in 1949 in Geneva, three, of course, are revisions of conventions that had been signed in 1929, and the purpose of revision was to improve and expand them in the light of the experiences of the second world war. The fourth convention, the one regarding Protection of Civilians in Time of War, was entirely new, although a very little part of it had been covered in a convention of 1907. The fourth convention relative to the protection of civilians, has mainly to deal with two kinds of aliens in time of war, aliens in territory of belligerents, especially German civilians in Canada who would have been covered by this convention in Canada if we had had it; and, secondly aliens, especially enemy aliens in territory occupied by the military. For example, toward the end of the war, when the Canadian army was occupying a part of Germany or Italy, although in the case of Italy it was a little more confusing, but, in any event, Germany, this convention would have covered the rights and protection of the German civilians living in the territory occupied.

Since the conventions were signed, a vast number of countries, 98 in all, have either ratified or acceded to the four conventions, and are therefore party to it. It was mentioned in the Senate that only some 56 countries had signed in 1949; but subsequently a great number of countries some of which did not even exist in 1949, and others which had not signed the convention in 1949, became party to the convention by what is called "accession." So at this time there are

98 countries out of a theoretical total in the world of about 110 which have either ratified or acceded to the conventions.

Senator CROLL: What is the difference between the two terms?

Mr. WERSHOF: Well, the word "ratification" is used if a country has signed a treaty and then ratifies. Most treaties of this kind usually provide that after a certain date a country which was not a signatory can become a party to the treaty by depositing an instrument of accession. Whereas if a country has been a signatory, they deposit a ratification. The legal effect is exactly the same.

Senator POULIOT: The names of East and West Germany are not included in Article 159, on the last page.

Mr. WERSHOF: These are the countries which actually signed in 1949, but as a matter of fact both East Germany and West Germany have subsequently acceded to the conventions. I have the complete list here which, if the chairman desires, I could file with the secretary, of all the countries, some 98 in all, including the two Germanies and Japan, which have either ratified or acceded.

Senator POULIOT: I would move that the list be published as an appendix to these proceedings.

The CHAIRMAN: Is that agreed?

Hon. SENATORS: Agreed.

(For list of ratifying and acceding countries see Appendix A.)

Mr. WERSHOF: If you will allow me, Mr. Chairman, I will say, just in a few words, why the Government, as I understand it, felt it necessary to have a bill. The bill is serving two purposes. The intention of the Government is to go ahead and ratify these four conventions which Canada signed in 1949. As you know, it has been the custom in Canada that before the Government ratifies an important formal convention, the approval of the Senate and House of Commons is sought in one form or another. Sometime it is sought by a resolution. In this case, as they needed to have the bill anyway for certain things, clause 2 of the bill really takes the place of what otherwise would be a resolution of approval.

The only purpose of clause 2 is to say that the Senate and House of Commons approve the conventions. The Government's intention is they will then go ahead and deposit ratifications. Whereas the other clauses are put in for quite a different purpose. Most of the provisions of the four conventions are capable of being carried out by the Canadian Government, in the opinion of the legal authorities including the Department of Justice, without any change in Canadian statute law; that is, most of the provisions—and they are very voluminous conventions, as you can see.

But there are a few provisions which the Department of Justice, with the help of the lawyers in National Defence and External Affairs, decided and so advised the Government could not in time of war be carried out by the Canadian Government unless certain changes were made in Canadian statute law. That is what clause 3 of the bill is about. The punishment of grave breaches of the conventions is one of the provisions.

Clause 2 of the bill is intended to carry out a specific obligation in each of the four conventions whereby the contracting government undertakes to punish what are called grave breaches of the conventions. It was found that under our existing Criminal Code, though there was adequate law to punish such deeds in wartime if committed in Canada, that some new legislation would be needed if we were to punish a grave breach of the conventions which might theoretically be committed by a Canadian—though one hopes not—abroad. If

it were committed abroad some new legislation is needed, and that is all clause 3 is intended to cover.

Senator POULIOT: It was by virtue of the 1949 convention that the Nuremberg trials took place?

Mr. WERSHOF: No, they were not pursuant to these conventions.

Senator POULIOT: Was there a convention of the same kind which was signed before the last World War?

Mr. WERSHOF: There were three conventions in 1929, but there was no convention that gave the basis for the Nuremberg trials. They were set up by an agreement between the principal allied powers at the end of the war, who made an agreement, an ad hoc agreement, to set up the Nuremberg trials for the punishment of major war criminals.

Senator POULIOT: My question was: Was there a convention quite similar to this before the last world war, World War II?

Mr. WERSHOF: There were conventions similar to the first three of these four, but they did not include these clauses relating to punishment of grave breaches. They were not worded in the same way as they are worded in the 1949 convention. They were not suitable, in the opinion of the principal allied governments, as a basis for the Nuremberg trials, and they were not used for that purpose.

Senator POULIOT: I wonder if the word "breaches" is the appropriate expression, because my understanding is that all those conventions are for peacetime, and as soon as war is declared they are put aside, and there are cases of unqualified cruelty without considering the conventions at all. Then it is just the same as if international law did not exist.

Mr. WERSHOF: Senator, the purpose of the conventions is to operate in war-time. That is the hope, and that is the way they are worded, to operate in war-time and to act as a restraint on foreign governments in time of war.

In the last war and perhaps afterwards, and maybe senators would wish to ask the Judge Advocate General what he thinks on this, there were certainly many acts of cruelty, lawlessness and brutality, on the other hand there was a great deal of compliance with the provisions of the 1929 Conventions. Of course, our Department is not as knowledgeable on that as is the Judge Advocate General.

Senator POULIOT: I agree that these conventions answer to a noble ideal.

Mr. WERSHOF: Yes, and I would hope that in times of war, even the worst government of another country, might, having signed and ratified these, decide to obey at least some of the provisions. Let us hope that they would obey all of them. In the last war most of the belligerents gave attention to, and certainly on our side, there was very meticulous effort to obey the conventions, and even on the enemy side. Certainly most of the time most of the provisions were complied with.

I am sorry I have spoken so long but clauses 4 to 8 are for a different purpose. The conventions both as regards prisoners of war and as regards civilians contain very elaborate new protections. For example, an enemy alien interned in Canada may be put on trial for some offence committed in an internment camp, or a prisoner of war may be put on trial for an offence committed in a prison camp. The convention contains very elaborate procedures for the protection of such an individual, for example, it guarantees the notifying of the protecting power. This is to enable the Government to carry out its commitments under these clauses.

Senator POULIOT: Did Germany and Japan sign the previous convention?

Mr. WERSHOF: Germany had signed it in 1929, but Japan had not. I think at the beginning of the war in the Far East Japan declared unilaterally that they intended to comply with them. It is a matter of opinion as to the extent to which they did comply. However, Japan has signed these new conventions and so has West Germany and for that matter East Germany.

Would you allow me to say another word on a point which does not appear in the Bill and which I am authorized to state by the Government. When the Canadian Government signed the conventions of 1949 they decided that the sections in the fourth Convention, the Civilians Convention, should be subject to one reservation. This is in article 68, paragraph 2 of the Civilians Convention which you will find on page 118 of the bill. We attached a reservation to that clause, and if the honourable senators desire I shall read out the reservation in a moment. However, the Government has now decided that when this has been ratified, after Parliament has approved, the Government will withdraw its reservation which was attached with its signature in 1949.

Senator CROLL: This has to do with penal provisions.

Mr. WERSHOF: It has to do with the death penalty in occupied territories. The second paragraph of Article 68 of the Civilians Convention contains restrictions on the imposition of the death penalty by a military occupying force on civilians in occupied territory. At that time the Government felt that in their view this paragraph went too far and they attached a reservation saying that the Government did not accept one of the limitations in that paragraph. In any event our Government has now decided, and I have been authorized so to say, to drop that reservation when they ratify the conventions which is intended to be done after Parliament has approved them.

In the opinion of the Department of Justice and the other Government lawyers there was no need for the text of the bill to be attaching all of the reservations that had been made in 1949. All that was thought legally necessary to have in the bill was the actual substantive text of the conventions, but we thought, and the ministers thought, that the Senate Committee should be told there had been one reservation which the Government intends to drop when the conventions are ratified.

Senator ASELTINE: Fifteen years have gone by. For the record, can you tell us why there has been so much delay?

Mr. WERSHOF: Sir, I hope I will not appear to be disrespectful but I cannot as a civil servant give a candid answer, although as a civil servant with access to the files of 15 years—and, as a matter of fact, I was on the delegation that signed the conventions—I do know some of the reasons that were in the mind of Mr. St. Laurent from 1949 to 1957, and also in the mind of Mr. Diefenbaker, as to why they did not get on with the ratification. There were reasons which at the time apparently influenced the Government of the day to feel that it did not wish to do anything about ratifying them at the time. For one thing, there was no great pressing need because these conventions apply to wartime, and the 1929 conventions remained in force.

In any event, successive governments did not decide to get on with ratification until last year when the present Government, having been reminded by its officials—as was our duty—that quite a number of years had gone by, decided that the time really had come to get on with the task of ratification. The Department of Justice was then instructed to see just what legislation would be needed, and this bill is the result. But, whether the reasons for delay in the past were good, bad or indifferent it is now, at least, the wish of the Government to have these conventions ratified.

Senator ASELTINE: It is not for you to say whether the reasons were good, bad or indifferent?

Mr. WERSHOF: No, it is not.

Senator CROLL: As a matter of fact, our record on the Geneva Conventions is pretty good.

Mr. WERSHOF: Oh, yes.

Senator CROLL: I think, in fairness to both governments, it was the legal eagles who just could not agree as to how this matter should be approached; whether it should be done by way of resolution or by way of a bill. They took 15 years to argue it out.

Senator POULIOT: Schedule I is the text of the convention that was signed in 1949?

Mr. WERSHOF: Yes, all four of the schedules. There are four conventions, Senator. The first one is called the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. This is usually referred to as the Red Cross convention, because that is the basis for the respect for not only the Red Cross but for the medical people in the armed forces, and for the wounded themselves. The second convention is a similar one—

Senator CROLL: On what page is that?

Mr. WERSHOF: Schedule I is at page 6, and Schedule II is at page 27. This is similar to the first convention, but it deals with the armed forces at sea—in other words, on ships.

The third convention is at page 46, and is the new Geneva Convention relative to the Treatment of Prisoners of War. It is much lengthier than the 1929 Prisoners of War Convention. The Judge Advocate General, if Senators were to ask him, would be able to indicate some of the important improvements in it.

The fourth convention is at page 97, and it is for the Protection of Civilians in Time of War. It took the conference four months in 1949 to produce these.

Senator LAMBERT: These are now being ratified for the first time?

Mr. WERSHOF: By Canada.

Senator LAMBERT: Yes.

Mr. WERSHOF: But they have been ratified by a number of other countries, and I have deposited a list.

Senator LAMBERT: Have you had occasion for recourse to them?

Mr. WERSHOF: The only time it could be said that we had was during the Korean War. That is the only war that has taken place since 1949. What the Government did on that occasion was to declare that although these conventions had not been formally ratified the Canadian forces would respect the provisions of these four 1949 conventions in the Korean conflict.

Senator LAMBERT: And that would be expressed in what form?

Mr. WERSHOF: We made a public declaration, and I believe we sent a note . . .

Senator LAMBERT: The Crown would act in its own capacity, I expect.

Mr. WERSHOF: That is an executive act on the part of the government of the day.

Senator YUZYK: May I ask if there is an index to this Geneva Convention, to this present bill, as we have no index.

Mr. WERSHOF: I am sorry we were late in producing it. The index is not a legal part of the convention but simply a piece of paper that is being produced. It is not in the bill. It was distributed a little late in the day, to help members of Parliament. The French edition will be out soon.

Senator GOUIN: This index is extremely useful, as the contents are extremely long and without the index it would be hard to follow them.

Mr. WERSHOF: I am sorry we were late with it. The Queen's Printer was very busy.

Senator POULIOT: It takes a long time to read it.

Mr. WERSHOF: Yes, even to read the index.

Senator CROLL: It will be some time before I understand it. You said to Senator Pouliot that what was done at the Nurnberg trials was outside the convention. Is there anything in the convention that now will permit us to do what we did *ad hoc* during the Nurnberg trials?

Mr. WERSHOF: In my opinion, sir—it is just an opinion—these conventions are not intended to deal with war crimes. In fact the phrase "war crimes" is not used in them at all. On the other hand, there are certain offences which might be considered by some governments or some people to be war crimes, which are defined as grave breaches under one or other of these conventions.

Let us take a simple case. For example, the murder of a prisoner of war. I think most people would regard the murder of even one prisoner of war as a war crime and certainly systematic murder or beating of prisoners of war would be regarded as a war crime.

Under the conventions here the maltreatment—and obviously murder of a prisoner of war—is defined as a grave breach at the convention, and each contracting party is bound by the convention to punish the wrongdoer if it can put its hands on him.

Therefore, if in pure theory, supposing that this convention had been in force at the end of the last war and supposing that the Canadian Government had put its hands on a German officer who was charged with having murdered Canadian prisoners of war, I think that it would have been possible for the Canadian Government, under clauses of this convention and with the aid of this bill, to have put him on trial in Canada. But basically these conventions are not really intended for war crimes in the broad sense. For example, the war crimes for which the leading war criminals were put on trial at Nurnberg are not the kind of offences dealt with in these conventions. They were dealing with great crimes—those of instituting the war, of enslaving whole peoples, of committing genocide, and thing like that.

That is not the purpose of these conventions. These are of a different kind.

Senator POULIOT: Did those trials take place in peace time?

Mr. WERSHOF: Yes, sir, after the end of the war.

Senator POULIOT: I congratulate you for your fairness and your honesty, to say that this is for peace time.

Senator CROLL: That is hardly fair.

The CHAIRMAN: I think he said the reverse.

Mr. WERSHOF: I do not want to mislead the committee. The main purpose of the conventions are really intended for time of war. Although certain things will happen at the end of the war—if we live long enough to put our hands on the people who have broken the conventions—after the war, it is our job to put them on trial. The purpose of the conventions is to regulate and restrain the behavior of governments and armed forces during time of war. Whether it will succeed is another matter.

Senator POULIOT: There are two kinds of decisions that are made concerning war crimes—I mean, in peace time. It could be a consensus or an agreement between all the allies, as it happened in the case of the Nurnberg trials. All the allied countries, or their military staffs, joined together to make a decision concerning the Nurnberg trials. I think that is a fact. It is what you have said. On the other hand, there is the case of Russia which decided to act alone for the punishment of war crimes. So, there is the one

decision, and the joint decision. What I want to know is if it is in virtue of those conventions necessary to have a joint agreement for the punishment of crime, or can Canada act according to the principles laid down in those conventions to punish war crime. I think my question is clear enough.

Mr. WERSHOF: It is clear, senator, but I am afraid my answer will not be very clear. It is not the main purpose of these conventions to prepare for the punishment of war crimes. The conventions deal only with acts against individuals, mostly, and some of these acts, such as the example mentioned of a murder of a prisoner of war, would be a grave offence under the prisoners of war convention, and would be punishable by the contracting party, by the government, that puts its hands on the wrongdoer; but the big war crimes, to which Senator Pouliot referred, were simply not within the ambit of these conventions. Whether they should have been is a matter of opinion, but, in any event, they were not.

The conference in 1949 which drew up these conventions, definitely, as was said by everybody at the beginning, was not for the purpose of drawing up a treaty for the punishment of war crimes, but rather to improve the existing treaties relating to the wounded and sick, and Red Cross and medical workers of the armed forces. They were improving the convention on the prisoners of war, and then drawing up a new convention for the protection of enemy civilians, mainly, but alien civilians in time of war; but they were not trying to deal with the big subject of war crimes.

Senator LAMBERT: Would any of the conventions under this bill be subject to both a court martial and a civilian court?

Mr. WERSHOF: Both, sir. This is pretty technical. In some cases it will be a civilian court, for which the breach of the convention would be brought as an offence, and in other cases it might be a military court. Perhaps when the Judge Advocate General is called, he will deal with that, since he is an expert.

Senator LAMBERT: I think when they were discussing the Militia Act earlier the question came up about a civil court having been appealed to from a decision of a court martial, if the ground were established for that.

Brigadier LAWSON: There would be an appeal based on the award of an offender under these conventions.

The CHAIRMAN: Honourable senators, if there are no further questions to be asked of Mr. Wershof, I think we should like to hear from Brigadier Lawson.

Brigadier W. J. Lawson, Judge Advocate General: Mr. Chairman and honourable senators, I have very little to add to what Mr. Wershof has already said. These conventions are of vital concern to the Canadian forces for two reasons, first, because members of the forces engaged in the act of operations will be afforded the protection of the conventions; secondly, because the Canadian forces will to a much larger degree be responsible for applying the conventions on behalf of Canada.

As Mr. Wershof has said, and as has been discussed, although these conventions represent a major part of the law of war, they do not constitute all. Generally speaking, they are applicable not in the heat of battle, but as conditions become more stable, that is, when the wounded and shipwrecked are gathered and cared for after an engagement, when territory has been occupied or combatants are taken prisoner of war. They do not deal with the conduct of hostilities nor prescribe weapons of war which are lawful to use. Such matters are dealt with in part in conventions such as the 1925 Protocol prohibiting the use of poison gas and the Hague Rules prohibiting weapons causing unnecessary suffering. The 1949 conventions are confined to the alleviation of suffering that results from armed conflict. Your attention has been drawn to the "grave breaches" articles of the convention. Here again, I should like to point out that

though grave breaches are war crimes they do not comprise an international code. There still remain many other violations of the laws of war that are punishable as war crimes but that are not a part of these conventions.

Senator POULIOT: Canada was a party to that convention from the time that she signed it?

Brigadier LAWSON: Canada was not bound until ratification.

Senator POULIOT: I thought that according to the principles of international law, as understood in that light in Canada, our country is bound from the time that an agreement or a convention or a treaty is signed. I mean that our country, Canada, is bound to respect a convention or to act upon it from the time it is signed by us, whether any legislation is passed or not. For instance, I remember very well when I was a member of the House of Commons that the responsibility of the country started from the time of the signing of the instrument. But leaving that aside, is it your knowledge, sir, that these conventions have been applied by any country that has signed it from the time that it was signed?

The CHAIRMAN: I think Senator Pouliot's point, Mr. Wershof, is that in his view Canada was bound by these conventions as soon as they were signed, as I understand it, on August 12, 1949. Is that an accurate statement?

Mr. WERSHOF: From a technical, legal viewpoint, I am sorry to disagree with the senator, but my opinion is, no, that is not correct. When a treaty is subject to ratification, as these are, the act of signing does not legally, in international law, bind the Government. We become internationally bound when we ratify it.

Senator POULIOT: Just the same as in the United States for the treaty of Versailles, it was signed by Wilson and Congress voted against it?

Mr. WERSHOF: Yes.

Senator POULIOT: We are in the same position now?

Mr. WERSHOF: There is a resemblance, but technically no government that signed this is bound by international law until it ratifies it.

The only occasion which arose between 1949 and the present day when it was a practical problem was during the Korean war. Then the Canadian Government declared unilaterally, as an executive action, it was the intention of the Canadian Government and the Canadian armed forces to respect the terms of the 1949 conventions, just as if we had ratified them.

Senator POULIOT: As I said, leaving that aside, were there, to your knowledge, some instances in which the countries that have ratified the signature of those conventions, have applied the principles laid down by the conventions?

Mr. WERSHOF: Well, there has only been one good-sized war since 1949, and that was the Korean war. In that war the belligerent countries, whether or not they had ratified the conventions by that time—and not even the United States and Great Britain which took part in the Korean war had ratified these conventions at the time of the Korean war—all of the countries that took part in that war announced they were going to respect these conventions during the Korean war. I have no doubt the United States, Britain, Canada and other countries which fought under the United Nations flag during the Korean war did respect it. Whether the North Koreans and Chinese communists did respect it, I am not in a position to say.

Senator POULIOT: I remember there was a well-known and famous German prisoner of war here in Canada for some time, and afterwards he was released. I do not remember his name.

Senator CROLL: Meyer was his name.

Senator YUZYK: Kurt Meyer.

Senator POULIOT: Yes. Now, when he was in Canada was he under the jurisdiction of the Canadian Government or under whose jurisdiction was he?

Brigadier LAWSON: He was under the jurisdiction of the Canadian Government.

Senator POULIOT: Was he freed by the Canadian Government?

Brigadier LAWSON: Yes, he was freed by the Canadian Government.

Senator POULIOT: Did those conventions have anything to do with it or was it the good pleasure of the Government of the day to free him?

Brigadier LAWSON: Mr. Chairman, Kurt Meyer was tried under the War Crimes Regulations, which had nothing to do with this convention. Those were special regulations under the War Measures Act.

Senator POULIOT: So the Canadian Government had nothing to do with his release.

Brigadier LAWSON: Yes, he was a prisoner of the Canadian Government.

Senator POULIOT: Well he was sentenced in view of the principles laid down by the Nuremburg trial, how could the Canadian Government have the right to release him?

Brigadier LAWSON: Mr. Chairman, Kurt Meyer was not tried at Nuremburg; he was tried by a Canadian court under Canadian law.

Senator CROLL: By what authority? Was there an Order in Council?

Brigadier LAWSON: That's right. War Crimes Regulations were passed by the Governor in Council under the War Measures Act, and it was under those Wartime Regulations that General Kurt Meyer was tried by a Canadian Military court.

Senator POULIOT: Then he was freed by the Canadian Government.

Brigadier LAWSON: By the Executive Act of the Canadian Government.

Senator POULIOT: And those conventions had nothing to do with it?

Brigadier LAWSON: No.

Senator CROLL: This leads me into a line of thought away from the conventions. Where else can I get free advice if not here. What are we doing about war crimes as such? We have a precedent. The Nuremburg trials were a wartime precedent. What are we doing now in peacetime on an international basis to reach an agreement on what constitutes war crimes.

Mr. WERSHOF: I am not aware anything special has been done except in regard to genocide, one of the greatest war crimes, where a United Nations convention was drawn up some years ago declaring genocide to be a crime. That was one dreadful crime. I am sorry, I have just been told—I should have remembered this, but as it didn't come under the conventions I didn't brief myself on war crimes—there is a United Nations commission which has been studying the question Senator Croll has asked, namely, what should be done in peacetime to lay down an international code of law respecting war crimes. It is in the stage of experts working in committee at the present time.

Senator POULIOT: Those experts have not come to a conclusion?

Mr. WERSHOF: Not that I know of.

Senator POULIOT: A final question as to what if anything can be done in virtue of these conventions.

Mr. WERSHOF: The main use of these, and a very important use in the opinion of the government, and of all governments of Canada since 1949, and of the officials, is, in the light of experience of the last war, where the three conventions of 1929 were respected by some countries all the time, and I believe Canada is one of those—that the Canadian government and every-

body in the Canadian armed forces tried to respect the 1929 conventions meticulously.

Senator CROLL: We tied up a few prisoners, of course, but that is all.

Mr. WERSHOF: Even on the enemy side if it had not been for the 1929 conventions it seems that the condition of Canadian prisoners of war in enemy hands would have been a lot worse than it was. It is hoped that if there should be another war—and we all pray there will not be—all governments which signed these conventions, even enemy governments, will pretend to respect them, or will respect them, or go through the motions of respecting them. On our side I am certain that the Canadian Government will respect every paragraph in them. But, no one can guarantee that an enemy government in a future world war is going to obey every page of these, but that is the purpose of them. It acts as a kind of restraint on the conduct of governments and armed forces.

Senator LAMBERT: In the case of Cyprus at the present time, if any violation of these conventions occurs, what jurisdiction or court will deal with them?

Mr. WERSHOF: Mr. Chairman, my offhand opinion is that I do not think these conventions are binding between any of the governments involved in any of the affairs on Cyprus. Whatever is going on in Cyprus is not an international war between two states, so the conventions do not apply. I am not prepared to certify this, but I think probably appeals have been made to the different armed forces, both officially and unofficially, on Cyprus asking them to respect any relevant provisions of these conventions.

Senator LAMBERT: Would it be analogous to Korea?

Mr. WERSHOF: No, there there was an international war. There were sovereign states involved. The North Korean Government and, later, the Chinese Communist Government, in my view, were certainly fighting a war with certain western governments.

I am reminded that, for example, article 3 of the first convention on page 6 might be relevant to Cyprus. I do not know whether anybody has raised the point in Cyprus yet, but Article 3 reads:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties,...

and Cyprus, even though it is a fairly new sovereign state, is a contracting party—

...each Party to the conflict shall be bound to apply, as a minimum, the following provisions...

I will not read the whole of article 3, but it is to the effect that if there is a civil war, or something that is not an international war, the people who are doing the fighting, whether sovereign states or not, ought to respect the relevant terms of these conventions. It really becomes a bit confusing legally at that point, because a convention, like a treaty, is supposed to be an agreement between sovereign states.

Senator LAMBERT: The United Nations has not any particular machinery to deal with the violations of these conventions?

Mr. WERSHOF: These are not United Nations conventions. The history of them is that the International Red Cross has always been the driving force in getting these conventions prepared, and the Swiss Government is the custodian. These are not United Nations conventions.

Senator LAMBERT: The point I had in mind is that the force in Cyprus today is a United Nations force.

Mr. WERSHOF: Yes. I am sorry that I am not at the moment briefed to give a precise answer to your question as to whether these conventions have been

invoked by the Commander of the United Nations force. The United Nations force is not fighting anybody. It is supposed to be in between two groups of local belligerents in order to prevent them from fighting.

Senator LAMBERT: It seems to me that this opens up a field that comes pretty close to being under the jurisdiction of the United Nations, and that therefore there should be an international court of justice, or a United Nations court to deal with violations.

Senator YUZYK: Article 159 on the last page says that these conventions are registered with the secretariat of the United Nations.

Mr. WERSHOF: Yes, they are registered.

Senator YUZYK: Therefore, the United Nations in its discussions of international law in relation to something that is being done is keeping these in mind. There is a sort of force of world opinion working here.

Mr. WERSHOF: Certainly, Senator. The conventions form a part of the generally accepted international law.

Senator POULIOT: If the honourable gentleman is through with his question may I say that I remember, Mr. Chairman, that during the Korean War that war was not called a war. It was called something else. I do not remember how it was described, but we speak of it now as a war, and, of course, it was a real war. However, at that time it was not a war; it was something that happened. However, this is not my question. I have one final question to ask. Do these conventions ban nuclear arms?

Mr. WERSHOF: No, Mr. Chairman, they do not deal with nuclear arms.

Senator CROLL: They do not deal with any arms.

Mr. WERSHOF: That is dealt with in another convention.

The CHAIRMAN: Are you ready to consider the bill, or are there further questions?

Senator CROLL: Mr. Chairman, we do have a few minutes remaining?

The CHAIRMAN: Yes.

Senator CROLL: Perhaps we should ask a few more questions, and discuss it further. Do you mind looking at page 6 for a minute? Just as a matter of interest. You notice in Article 3 they say "persons taking no active part in the hostilities, including members of armed forces who have laid down their arms". "Persons taking part in hostilities" would be soldiers there with the United Nations Force—presumably that is what they are doing, what we are told they are doing.

Brigadier LAWSON: I would say at the moment they are taking no part in hostilities, but there may be circumstances arising wherein self protection is necessary.

Senator CROLL: The point I am making is that the question arose whether this would be a matter of a section which would be binding and clearly that would cover our forces there at this moment. That is what struck me and what follows on page 7 at the top would be applicable.

Brigadier LAWSON: My opinion would be that our forces are protected at the moment in Cyprus by Article 3 and that a violation of any of its provisions could be a grave breach and punishable as a grave breach, by Canadian forces or forces from any other country that is party to the conventions.

Senator CROLL: Exactly. I thought that was of interest. I have no other questions on the bill. Frankly, it has been too much for me. However, take Schedule IV, page 97. That is new?

Brigadier LAWSON: That is entirely new.

Senator CROLL: Is there something that you would point to there that we would be interested in, particularly since it is new?

I assume that some other legislators went through the other conventions in due course and did their best to correct them and give their views. No one has done that about schedule IV, since it is new, except the department?

Mr. WERSHOF: Schedule IV was the product of years of international work under the auspices of the International Committee of the Red Cross with various governments taking part in the preparatory work long before we got to Geneva in 1949. It was not a case of coming to Geneva and being handed this convention, Schedule IV, and being asked to sign it. Some two years earlier, or one year earlier, in 1948, I think, in Sweden, there had been a conference sponsored by the International Red Cross, to which both governments and Red Cross Societies sent delegates, to do preparatory work on these conventions. The Canadian Government had a delegation there also. It was something new and it was developed mainly by the International Red Cross with the assistance of governments all over the world, in the light of some of the dreadful experiences of World War II.

In that war, it was apparent that, although even Hitler was even legally bound by, for example, the Prisoners of War Convention, as we know, most of the time most allied prisoners of war were treated more or less in accordance with the convention. I think that is a fair statement. But there was no convention for the protection of alien civilians on German soil or for the protection of alien civilians on the various territories occupied by German armies. There was nothing but a few provisions in the Hague Convention of 1907.

Had this convention been in force and had the Germans signed it, who knows whether the German government would have paid some respect to it. No one can guarantee that, but at least if there is a convention of this kind, which guarantees humanitarian decent treatment and that there is some legal process for enemy aliens in your own territory and for enemy aliens in the territory which your armies overrun, then there is at least a chance that even the Hitler government will respect it. But if there is not any convention, then there is very little international law to go on. Therefore, the great value of convention 4 is that if there should be another war, even remotely comparable to the last one, this convention undoubtedly would be of tremendous value in improving at least the treatment of civilians in occupied territory, including enemy aliens there.

I would like to add that Schedule IV was drawn up in 1949. Even though the atomic bomb was known, some of the developments we know about now were not too well known in 1949. Whether it would have been drafted any differently, I do not know; but, as the Judge Advocate General says, it is not the purpose of these conventions to prevent war or to regulate the use of dreadful weapons in war. That simply does not come within these conventions. At least, it is supposed to regulate the behaviour of governments and armed forces in the treatment of members of the enemy forces, and in the treatment of civilians—enemy civilians and people like that.

The CHAIRMAN: Honourable senators, are you ready to consider the bill? I think perhaps since it is a technical bill, and we might not want to amend any of the sections, perhaps someone would move that the bill as a whole be passed.

Senator CROLL: I so move.

Senator YUZYK: I second the motion.

The CHAIRMAN: The bill is approved.

Thank you very much.

The committee adjourned.

APPENDIX "A"

PARTIES TO THE GENEVA CONVENTIONS, 1949

The following countries (94) have ratified or acceded to the Geneva Conventions:

<i>Name of Country</i>	<i>Date of Ratification or Accession</i>
Afghanistan	Sept. 26, 1956
Albania	May 27, 1957
Argentina	Sept. 18, 1956
Australia	Oct. 14, 1958
Austria	Aug. 27, 1953
Belgium	Sept. 3, 1952
Brazil	June 29, 1957
Bulgaria	July 22, 1954
Byelorussia	Aug. 3, 1954
Cambodia	Dec. 8, 1958
Cameroun	Sept. 16, 1963
Ceylon	Feb. 28, 1959
Chile	Oct. 12, 1950
Columbia	Nov. 8, 1961
Congo (Leopold)	Feb. 24, 1961
Cuba	Apr. 15, 1954
Cyprus	May 23, 1962
Czechoslovakia	Dec. 19, 1950
Denmark	June 27, 1951
Dahomey	Aug. 1, 1960
Dominican Republic	Jan. 22, 1958
Ecuador	Aug. 11, 1954
El Salvador	June 17, 1953
Finland	Feb. 22, 1955
France	June 28, 1951
German Federal Republic	Sept. 3, 1954
Ghana	Aug. 2, 1958
Greece	June 5, 1956
Guatemala	May 14, 1952
Haiti	Apr. 11, 1957
Holy See	Feb. 22, 1951
Hungary	Aug. 3, 1954
India	Nov. 9, 1950
Indonesia	Sept. 30, 1958
Iran	Feb. 20, 1957
Iraq	Feb. 14, 1956
Ireland	Sept. 27, 1962
Israel	July 6, 1951
Italy	Dec. 17, 1951
Ivory Coast	Aug. 7, 1960
Japan	Apr. 21, 1953
Jordan	May 29, 1951
Laos	Oct. 29, 1956
Lebanon	Apr. 10, 1951
Liechtenstein	Sept. 21, 1950
Liberia	Mar. 29, 1954
Libya	May 22, 1956
Luxembourg	July 1, 1953

STANDING COMMITTEE

<i>Name of Country</i>	<i>Date of Ratification or Accession</i>
Malagasy Rep.	June 26, 1960
Malaysia	Aug. 24, 1963
Mauritania	Nov. 28, 1960
Mexico	Oct. 29, 1952
Monaco	July 5, 1950
Mongolian Rep.	Dec. 20, 1958
Morocco	July 26, 1956
Nepal	Feb. 7, 1964
Netherlands	Aug. 3, 1954
New Zealand	May 2, 1959
Nicaragua	Dec. 17, 1953
Nigeria	Oct. 1, 1960
Norway	Aug. 3, 1951
Pakistan	June 12, 1951
Panama	Feb. 10, 1956
Paraguay	Oct. 23, 1961
Peru	Feb. 15, 1956
Philippines	Mar. 7, 1951
Poland	Nov. 26, 1954
Portugal	Mar. 14, 1961
Roumania	June 1, 1954
San Marino	Aug. 28, 1953
Saudi Arabia	May 18, 1963
Senegal	Aug. 20, 1960
Somalia	July 12, 1962
South Africa	Mar. 31, 1952
Spain	Aug. 4, 1952
Sudan	Sept. 23, 1957
Sweden	Dec. 28, 1953
Switzerland	Mar. 31, 1950
Syria	Nov. 2, 1953
Tanganyika	Dec. 9, 1961
Thailand	Dec. 29, 1954
Togo	Apr. 27, 1960
Trinidad and Tobago	May 17, 1963
Turkey	Feb. 10, 1954
Tunisia	May 4, 1957
Ukraine	Aug. 3, 1954
U.A.R.	Nov. 10, 1952
United Kingdom	Sept. 23, 1957
Upper Volta	Aug. 5, 1960
U.S.A.	Aug. 2, 1955
U.S.S.R.	May 10, 1954
Venezuela	Feb. 13, 1956
Vietnam	Nov. 14, 1953
Yugoslavia	Apr. 21, 1950

In addition, the following entities not recognized by Canada have deposited instruments of ratification or accession:

China (People's Republic)	Dec. 28, 1956
East Germany	Nov. 30, 1950
North Korea	Aug. 27, 1957
North Vietnam	June 28, 1957



Second Session—Twenty-sixth Parliament

1964

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON **EXTERNAL RELATIONS**

To whom was referred the
Bill S-24, An Act to amend the Privileges and
and Immunities (United Nations) Act

The Honourable G. S. THORVALDSON, *Chairman*

TUESDAY, JUNE 9, 1964

WITNESS

Mr. M. H. Wershof, Q.C., Legal Division,
Department of External Affairs

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1964

THE STANDING COMMITTEE ON EXTERNAL RELATIONS

The Honourable GUNNAR S. THORVALDSON, *Chairman*

The Honourable Senators

Aseltine,
Beaubien (*Provencher*),
Blois,
Boucher,
Bradley,
Crerar,
Croll,
Farris,
Fergusson,
Flynn,
Fournier (*De Lanaudière*),
Gouin,
Haig,
Hayden,
Hnatyshyn,
Howard,
Hugessen,
Inman,

Jodoin,
Lambert,
MacDonald (*Queens*),
Macdonald (*Brantford*),
McLean,
Monette,
O'Leary (*Carleton*),
Pouliot,
Rattenbury,
Robertson (*Shelburne*),
Savoie,
Taylor (*Norfolk*),
Thorvaldson,
Vaillancourt,
Veniot,
Vien,
Yuzyk (35).

Ex officio members

Brooks,
Connolly (*Ottawa West*).

(Quorum 7)

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, June 3rd, 1964.

"Pursuant to the Order of the Day, the Honourable Senator Gouin moved, seconded by the Honourable Senator Jodoin, that the Bill S-24, intituled: "An Act to amend the Privileges and Immunities (United Nations) Act", be read the second time.

After debate, and

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Gouin moved, seconded by the Honourable Senator Jodoin, that the Bill be referred to the Standing Committee on External Relations.

The question being put on the motion, it was—

Resolved in the affirmative."

JOHN F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, June 9th, 1964.

Pursuant to adjournment and notice the Standing Committee on External Relations met this day at 2.00 p.m.

Present: The Honourable Senators Thorvaldson (*Chairman*), Beaubien (*Provencher*), Blois, Bradley, Croll, Fergusson, Gouin, Haig, Lambert, MacDonald (*Queens*), McLean, Pouliot, Rattenbury, Savoie, Vaillancourt and Yuzyk.—16.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

On Motion of the Honourable Senator Croll, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 300 copies in French of the Committee's proceedings on Bill S-24.

Bill S-24, intituled: "An Act to amend the Privileges and Immunities (United Nations) Act", was read and considered.

The following witness was heard:

Mr. M. H. Wershof, Q.C., Legal Division, Department of External Affairs.

In attendance but not heard was Mr. R. J. MacKinnon, Legal Division, Department of External Affairs.

On Motion of the Honourable Senator Croll, it was resolved to report the Bill without any amendment.

Attest.

Dale M. Jarvis,
Clerk of the Committee.

REPORT OF COMMITTEE

TUESDAY, June 9th, 1964.

The Standing Committee on External Relations to whom was referred the Bill S-24, intituled: "An Act to amend the Privileges and Immunities (United Nations) Act", have in obedience to the order of reference of June 3, 1964, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

G. S. Thorvaldson,
Chairman.

THE SENATE

STANDING COMMITTEE ON EXTERNAL RELATIONS

EVIDENCE

OTTAWA, Tuesday, June 9, 1964.

The Standing Committee on External Relations, to which was referred Bill S-24, to amend the Privileges and Immunities (United Nations) Act, met this day at 2 p.m.

Senator GUNNAR S. THORVALDSON (*Chairman*) in the Chair.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report, recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: Honourable senators, we have a quorum. We are here to deal with Bill S-24, an Act to amend the Privileges and Immunities (United Nations) Act. We have with us as witnesses Mr. M. H. Wershof, Q.C., the legal adviser of the Department of External Affairs, and Mr. R. J. McKinnon of the legal division of the same department.

If you are ready to hear Mr. Wershof, honourable senators, I will ask Mr. Wershof to make his remarks upon this bill.

Mr. M. H. Wershof, Legal Adviser, Department of External Affairs: Thank you, Mr. Chairman. When second reading was moved in the Senate, Senator Gouin explained very fully the purposes of the bill and why it was being introduced, but with your permission I might just expand a little on the explanations already given.

There are two quite separate reasons behind the decision of the Government to propose an amendment to the existing act. The first reason is: that the existing act only provides for the privileges and immunities of the United Nations itself, and gives permission for the Governor-in-Council to extend most but not all of the immunities in the United Nations Convention to what are called specialized agencies of the United Nations, of which Canada is a member.

The phrase "specialized agency" is a rather technical one, and even in the United Nations family there is one organization, the International Atomic Energy Agency in Vienna, which is in the United Nations body, but which is not technically a specialized agency. Therefore, the existing act could not be used, for example, to deal with any immunities or status that we ought to accord to that agency.

Then, of course, there are many other international organizations, of which Canada is a member, which are not in the United Nations family at all. For example, the O.E.C.D. in Paris. This is not a United Nations organization, but we have obligations as a member of the O.E.C.D. to be in a position to accord immunities to that organization.

Well, the government cannot do it under the existing act, because the existing act only empowers the Governor-in-Council to extend privileges and

immunities to specialized agencies. So that is the first reason. The part of the bill which will accomplish that, if the bill is passed by Parliament, is clause 3(b), which broadens the existing act to apply or to be capable of being applied to any international organizations of which Canada is a member, and of which the primary purpose is the maintenance of international peace or common social wellbeing, and so on. That is one purpose of the bill.

The other purpose of the bill is quite different. When the original act was passed and the authority was contained in it for the Governor-in-Council to extend certain privileges to specialized agencies, as set forth in the United Nations Convention, the Government and Parliament of Canada at that time did not provide for the extension of Article 6 of the United Nations Convention, which deals with experts on missions.

It is not a very practical problem—there are not that many official experts functioning in Canada on behalf of international organizations—nevertheless, it is thought by the Government that it should be in a position, if necessary, to extend proper status and immunities to official experts sent into Canada by either a United Nations organization or by an organization which will be covered, such as the O.E.C.D., when the first part of the bill is amended.

Senator BRADLEY: I suppose these specialized immunities will only last while the mission lasts.

Mr. WERSHOF: Yes, sir. In practice this is really not a very serious problem, because the only international organizations that are actually physically in Canada are the International Civil Aviation Organization, which has its headquarters in Montreal—and the Government has already, pursuant to the existing act, provided for them all the status and privileges which it is obliged to provide—and the International Labour Organization, which has a one-man office in Ottawa.

I am quite certain that at present there is no other permanent office in Canada of one of these international organizations. However, quite apart from permanent offices, from time to time conferences are held in Canada by one of these organizations, or they may send in some of their officials or experts on certain missions. Theoretically the Government should be in a position to recognize the status and immunity of such people.

In actual practice, nothing will happen because these people are coming in and going out all the time. They do not need any special certificates or pieces of paper from the Canadian Government, but as a matter of principle the Government felt that it ought to be legally in a position to extend or to recognize immunities if the question ever arose, or to extend privileges if the need ever arose; and in two particular cases Canada is a bit in default.

For example, the International Atomic Energy Agency, which is located in Vienna and of which we are one of the founding members, drew up a convention on the status and immunities of the International Atomic Energy Agency, and its staff and all the faithful members of the Agency ought to subscribe to that convention. However, Canada has not subscribed to it because it is not a specialized agency and therefore, under the existing act, the Canadian Government cannot do it.

The Government felt that it would be proper to round out the picture by acceding to the immunities convention of the International Atomic Energy Agency.

Senator Haig: If we pass this act we can subscribe to that convention.

Mr. WERSHOF: Yes, sir. The Government will be in a position to do so. The Canadian Government has obligations to the O.E.C.D. to sign an immunity convention with them, but we have not done so yet because there is no provision in the existing statute. The amendment will make this possible.

I repeat that in practice it is not going to make any difference. People coming in are obviously law-abiding, and most of the time they are not here long enough for any serious question of privileges even to arise. It is more a matter of principle that the Government should be able to subscribe to these immunities conventions and should be in a position, if the need arose, to recognize, as all other nations do, the status and privileges of organizations themselves, of their senior executives, if the need arose, and of special missions if any such special missions were sent into Canada.

So it is more of a tidying-up operation than anything else. When the Government at that time drafted the original act they were not really able to foresee that the act was not quite adequate to meet these situations. For some years now the Government has felt that it would be a good idea to amend the act so that it will be in a position to carry out these other obligations.

Senator LAMBERT: Do you know if our present privileges and immunities, of which this is an enlargement, apply really to the local embassies?

Mr. WERSHOF: No, sir. This statute and the amending bill have no relationship to the ordinary diplomatic immunities of embassies. That is covered in a quite different way. The act and the amending bill have only to do with the status and immunities of international organizations.

Senator LAMBERT: I see. In that connection, is there any conflict at all, or pending possibility of conflict, with local by-laws? For instance, you have got provisions here for representatives who go to international exhibitions, like the one in Brussels, for example, where I suppose, the representatives are on the grounds, for possibly, five or six weeks. Is there any limitation or possible conflict of immunities there with the local by-laws—motor vehicle by-laws and so on?

Mr. WERSHOF: The possibility exists, but it is more theoretical than real. For example, if the Director General of the International Labour Organization, who is already covered under the existing legislation, were to come to Canada on official business—it is hard to imagine that he could get into the situation where a question of immunity from the courts arose, but if such a situation did arise—then we would have obligations towards him similar to the obligations that the Government has towards an ambassador. To that extent there is a theoretical possibility of conflict, but that theoretical possibility already exists under the existing law.

We have already accorded, and the Government is in a position to accord, immunity to quite a number of organizations. The first part of the amending bill is merely making it possible for the Government to do the same for a few organizations which are not eligible under the strict terms of the existing statute.

Senator CROLL: I think there are two instances where this might be conceivably useful. Correct me if I am wrong. The government would not be justified in refusing a man who belonged to one of these specialized agencies admission on account of security. He may be somebody we do not want in this country, but he is a specialized agent. I remember the reverse happening. Is that correct?

Mr. WERSHOF: Yes, sir. For example, article 5 of the basic United Nations Convention—you see the basic convention is dealing first with the juridical personality of the organization itself, then with the immunity of the property funds and assets of the organization. That is not a practical problem in Canada because the only organization here is the International Civil Aviation Organization in Montreal. Then, it deals with facilities in respect of communication. That is not a practical problem.

Senator CROLL: But what is the answer?

Mr. WERSHOF: The last one which Article 5 deals with is senior officials, and their immunities, and it says the Secretary-General of the organization will specify the senior officials to whom the article will apply, and then those officials are immune, for example, from legal process in respect of words spoken or written by them in their official capacity. They are exempt from taxation on their official salaries. They are immune from immigration restrictions—which is a point Senator Croll raised—and alien registration.

Senator CROLL: If we ever get one of those we will lose him. The Immigration Department loses people quickly. However, take the case of a man driving a car; he hits and kills a child and then claims immunity.

Mr. WERSHOF: First of all, senator, even if the bill is passed it does not mean that the Government can immediately start to pass orders-in-council for the benefit of all these people.

Senator CROLL: I am not opposed to it, if that is what it is intended to cover.

Mr. WERSHOF: The basic provision of section 19 of the United Nations Convention, which is the model for all of this, says, for example, that the secretary-general and all assistant secretaries-general—that is, just the top layer of officials—shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

Therefore, strictly speaking, if the assistant secretary-general of the United Nations were here, or the assistant secretary-general of some other organization of equal rank were here, and if he were discovered in a motor accident involving negligence then, strictly speaking, unless his organization waived the immunity for him, he would have the same immunity as an ambassador.

However, the convention goes on to say that the organization is to co-operate at all times with the local authorities and secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges and immunities mentioned therein.

Senator POULIOT: Will you please enumerate the immunities and privileges enjoyed under this bill?

Mr. WERSHOF: Well, the bill will simply make it possible to give the Government the power to extend to such organizations the kind of immunity set forth in the schedule to the existing act. That is about five pages long, but I will just read the headings again to show the kind of immunities which can be extended.

Senator POULIOT: To make it short—

Senator CROLL: To make it short, they are the same as the diplomatic immunities, are they not?

Senator POULIOT: To make it short, will you please tell us if, in virtue of this legislation, the luggage of those on admission will not be searched at the customs.

Mr. WERSHOF: If the assistant secretary-general, or higher, of an organization to which the legislation applies enters Canada, he has the same exemptions from search as an ambassador.

Senator POULIOT: What is the description of mission agents on passports? Do they have diplomatic passports?

Mr. WERSHOF: We do not give the passports to people who work for the United Nations or international organizations. The United Nations issues a United Nations passport to senior officials, in which they describe the status of the person.

Senator POULIOT: As soon as they have a passport from the United Nations, they are considered as ranking diplomats?

Mr. WERSHOF: No, sir. There are many people who have United Nations passports who do not have that rank, and will not be given it under this legislation, because first of all, the secretary-general of the organization will have to send to the Canadian Government a list of three or four top officials in the organization, and it would only be those three or four named persons to whom the Canadian Government would be legally obliged to accord the status of ambassador.

In actual practice they will not even send in the names. The existing organizations have not sent them in because there is no practical necessity for doing so. Organizations are not functioning in Canada on a full-time basis. The only organization which has sent to the Canadian Government the names of its top officials for the purpose of immunities is the International Civil Aviation Organization in Montreal. The ILO has one senior man in Ottawa, and his name has been given to us. The other organizations just do not do it because it is not worthwhile.

Senator CROLL: They do not send the names in, but their people are covered?

Mr. WERSHOF: They are only covered if the names are sent in to us.

Senator CROLL: Let us take a very senior official in one of the UN organizations who comes here for the purpose of visiting a senator, and who gets into a jam while he is here. Does he obtain the benefit of the immunity while he is in this country?

Mr. WERSHOF: The question has never arisen. If it arose in practice the first thing we would try to do in our department is to settle the matter on the basis of courtesy and co-operation with the local police, and it is a very rare occasion when we get to the point of where legal immunity is raised by anybody.

Senator CROLL: The point I am making is that the immunity follows him, and is with him wherever he is?

Mr. WERSHOF: If he is here on official business.

Senator CROLL: I was specific in not saying "official business". Must he be here on official business?

Mr. WERSHOF: Yes, sir.

Senator CROLL: That is the only occasion on which it applies?

Mr. WERSHOF: Yes.

Senator CROLL: Would a delegate from Canada to the United Nations have full immunity under this bill?

Mr. WERSHOF: No, not under this bill. He has immunity under the United Nations agreement, but not under our law. There is a whole chain of agreements with respect to the United Nations at New York. There is the United Nations Convention on Privileges and Immunities of the United Nations to which Canada and other member nations are a party.

Secondly, there is what is called a headquarters agreement between the United Nations and the United States Government—because the United Nations is physically in New York—under which the United States undertakes to accord certain immunities not only to the senior officials of the United Nations but also to the official delegates of the various countries who send people to the United Nations. Members of our delegations to the United Nations at New York do have certain immunities, depending on their rank, but they do not get them from the Canadian law; they get their immunities from the United Nations Agreement and the United States law.

The CHAIRMAN: What do you mean by "depending on their rank", Mr. Wershof, when you spoke in regard to Canadian representatives to the United Nations for the annual Assembly?

Mr. WERSHOF: That is Article 4 of the United Nations Convention which provides the representatives of members to the United Nations shall, while exercising their functions, enjoy certain privileges and immunities. The first, for example, is immunity from personal arrest or from seizure of their personal baggage, and also immunity from legal process in respect of what is spoken or written or in respect of acts done by them in their capacity as representatives. While that particular one would apply to all the official members of the national delegations it varies from article to article, Senator, under that one the official members of the Canadian delegation, or any other delegation, to the United Nations at New York have those privileges in the United States.

Senator LAMBERT: But there are distinct limitations in respect of violations of highway laws?

Mr. WERSHOF: Well, the immunity from jurisdiction does not give an immunity from the obligation to obey the law. An ambassador in Canada, or a Canadian ambassador abroad, has as much duty to obey the local law as any other citizen.

Senator LAMBERT: I think that is the important point.

Mr. WERSHOF: In international law the immunity of a diplomat, even 300 years ago, never gave immunity from the obligation to obey the law. What it gave was an immunity from the jurisdiction of the local courts. Diplomats in Canada are well aware that they have a duty under international law to obey the law of Canada. Our diplomats abroad know that—in fact, we remind them of it in the regulations, and they are very severely dealt with by our department for infractions—they must not seem to have flouted the local law, whether it be in the matter of traffic regulations or anything else.

The CHAIRMAN: Mr. Wershof, supposing an ambassador is involved in a traffic violation. He is not then dealt with, I take it, by the local municipal court. Who deals with such a case?

Mr. WERSHOF: Are we speaking of a criminal offence or civil suit?

The CHAIRMAN: I am speaking of just an ordinary violation of a municipal by-law, or a motor vehicles act.

Mr. WERSHOF: He is immune, and this applies all over the world. He is immune from the jurisdiction of the court unless he or his government waives his immunity. If it were a very serious offence it is presumed—and there have been precedents for this—that the government which sends him would call him back and take action against him if they could under their own law when he arrived home. If it is a trifling thing then I do not think in practice a government recalls an ambassador because of it. Just because an ambassador's wife parked two hours too long somewhere I do not think the ambassador would be recalled, but if such complaints are very frequent in the Canadian service then our department would take disciplinary action against the Canadian diplomat who was reported as having made a habit of breaking the local traffic laws.

Senator POULIOT: Who signs the certificates for the United Nations representatives from Canada?

Mr. WERSHOF: The Secretary of State for External Affairs signs the credentials of the Canadian delegation, and all members of the Canadian delegation to the United Nations at New York get passports which describe the capacities in which they are going to New York.

Senator POULIOT: They are given under the authority of the Minister for External Affairs?

Mr. WERSHOF: Yes, sir.

Senator POULIOT: But as long as it is given under his authority it may be given by anyone else under him?

Mr. WERSHOF: No, sir, the composition of a Canadian delegation to the United Nations is decided by the Government, but in any event it is the Secretary of State for External Affairs who signs the credentials of the delegation.

Senator CROLL: It is a special passport?

Mr. WERSHOF: First, the Secretary of State signs the credentials of the delegation. Then as a consequence our passport office issues diplomatic or special passports for that trip.

Senator POULIOT: I want to know what signature is on it.

Mr. WERSHOF: I will do my best to answer. There are different signatures. There is the Secretary of State for External Affairs. If any difficulty arises, we would go to the office of the Secretary General of the United Nations and he would give us a paper if there were any doubt about it. Then we would get a certificate at that point from the United Nations.

Senator BLOIS: That is what happens. We had experience of this when we were down there. I was there on three occasions. We were told that if there were any questions of traffic violations—not that I broke any law—we were to take whatever form or document the police gave us and turn it over to the United States ambassador to the United Nations. We were told never to argue but to take the document. We were always to take it to the secretary of our delegation and then it went to the United States ambassador to the United Nations. We had no problems.

The CHAIRMAN: I asked a question about customs. Do these immunities extend to customs laws? Just what are the duties of Canadian customs officials in regard to persons travelling on diplomatic passports or what we know in Canada as special passports?

Mr. WERSHOF: I will do my best to explain. It is a very complex affair.

The CHAIRMAN: If it is too complex, do not worry about it.

Senator CROLL: They just do not examine the baggage, that is all.

Senator BLOIS: In the case of a diplomatic passport or special passport they told me they were not necessarily entitled to do it, but often they allow it. On the diplomatic passport, they told us, we were by law granted immunity without going through baggage, but with the special passport it was different. That is what they did in the customs, but I do not know about the legal side of it.

Mr. WERSHOF: What the senator says is perfectly correct. What the customs people in different countries are required to do by international agreement is one thing; what they do in practice is something else again. In practice they may not bother opening baggage of many foreign functionaries who come with an impressive passport. That does not mean they may not open the baggage.

As far as the law goes in Canada, looking at the convention, one of the privileges under Article 4 says: "The same immunities in respect to personal baggage as are accorded to diplomatic envoys"; but even that is not as clear in international law as it might be. What happens to an ambassador might be a good deal more than he could claim in international law.

Senator CROLL: I move the adoption of the report.

On motion of Senator Croll, seconded by Senator Haig, report adopted.
The committee adjourned.

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